

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1284 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MANOJ KISHANLAL AGRAWAL - Applicant(s)
Versus
STATE OF GUJARAT THRO' P.P. & 2 - Respondent(s)

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Appearance :

MR SANJAY PRAJAPATI for Applicant(s) : 1,
Mr. RC Kodekar, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/07/2007

ORAL JUDGMENT

Rule. Shri RC Kodekar, learned
Additional Public Prosecutor, waives service of
Rule on behalf of respondent No.1. Shri H.B.

Raval, learned advocate appearing on behalf of the applicant seeks permission to delete respondents No. 2 and 3 so far as the present proceedings are concerned. Permission is accordingly granted.

2. Shri HB Raval, learned advocate has submitted that when the learned Additional City Sessions Judge, Court No. 16, Ahmedabad was of the opinion that the impugned order passed by the learned Chief Metropolitan Magistrate, Ahmedabad to hand over muddamal to the petitioner was without hearing the learned Addl. Public Prosecutor and the original-accused in that case while quashing and setting aside the order the learned Revisional Court ought to have remanded the matter to the learned Chief Metropolitan Magistrate, Ahmedabad for passing an appropriate order in accordance with law and on merits and after giving opportunity to the learned APP and the original-accused and after following due

procedure. Mr. Raval has submitted that no such direction is issued by the learned Additional City Sessions Judge while quashing the order passed by the learned Chief Metropolitan Magistrate, Court No. 16, Ahmedabad in Criminal Revision Application No. 248 of 2004 and the same may not be disturbed however the same may be modified to the extent that the matter be remanded to the learned Chief Metropolitan Magistrate for considering the application of the petitioner for giving custody of the muddamal to the petitioner and the same shall be dealt with in accordance with law and on merits and an appropriate order be passed after hearing the learned Additional Public Prosecutor as well as the original-accused and after following due procedure.

3. Hence, the order dated 28th February 2006 in Criminal Revision Application No. 248 of 2004 passed by the learned Additional City Sessions,

Judge, Ahmedabad is modified to the extent that the matter is remanded to the learned Chief Metropolitan Magistrate, Ahmedabad, for deciding the application of the petitioner for handing over possession of the muddamal. The learned Chief Metropolitan Magistrate, Court No. 16, Ahmedabad, is directed to pass an appropriate order in accordance with law and on merits after issuing Notice to the learned Additional Public Prosecutor as well as to the original-accused, and after giving opportunity to the learned APP/I.O., as well as to the original-accused and after following the due procedure. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R. Shah, J.]

rmr.